

44-1377



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

JAN 14 2005

IN REPLY REFER TO:

## NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7004 0750 0001 2844 1009

Mr. Vincent Armenta, Chairperson  
Santa Ynez Band of Mission Indians  
PO Box 517  
Santa Ynez, California 93460

Dear Mr. Armenta:

This is notice of our decision on your application to have the below described real property that is located contiguous to the exterior boundaries of the Reservation accepted by the United States of America in trust for the Santa Ynez Band of Mission Indians of California.

The land referred to herein is situated in the State of California, County of Santa Barbara, and is described as follows:

### PARCEL ONE:

ALL OF LOTS 1 TO 9 INCLUSIVE OF BLOCK 19 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED OCTOBER 13, 1882 IN BOOK "B", PAGE 441 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY.

### PARCEL TWO:

ALSO THE NORTHERLY ONE-HALF OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID ABOVE MENTIONED LOTS; THE EASTERLY ONE-HALF OF MAIN STREET EXTENDING FROM THE CENTERLINE OF SAID ALLEY TO THE SOUTHERN LINE OF NUMANCIA STREET; AND THE WESTERLY ONE-HALF OF TYNDALL STREET EXTENDING FROM THE CENTERLINE OF SAID ALLEY TO THE SOUTHERN LINE OF NUMANCIA STREET.

### PARCEL THREE:

THAT PORTION OF LOT 10 IN BLOCK 19 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, ACCORDING TO THE MAP THEREOF RECORDED OCTOBER 13, 1882 IN BOOK B OF MISCELLANEOUS RECORDS,



SYN 4170

AT PAGE 441 RECORDS OF SAID COUNTY, LYING NORTHERLY OF THE  
FOLLOWING DESCRIBED LINE:

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BEGINNING AT A POINT NORTH 14°45'17" WEST, 139.03 FEET FROM AN IRON AXLE (U.S. MONUMENT NO. 1) SET TO MARK THE SOUTHERLY TERMINUS OF THE COURSE NUMBERED 1 ON THE MAP ENTITLED "MAP OF THE LAND EAST OF LINE SANJO DE COTA CREEK NEAR THE VILLAGE OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, IN THE STATE OF CALIFORNIA, SUBJECT TO THE OCCUPANCY OF BAND OF VILLAGE OF MISSION INDIANS KNOWN AS SANTA YNEZ INDIANS, SURVEYED BY FRANK F. FLOURNOY, COUNTY SURVEYOR, JUNE 1899", FILED IN BOOK 1 AT PAGE 78 OF MAPS AND SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON THE 10TH DAY OF AUGUST 1899; THENCE FROM A TANGENT THAT BEARS NORTH 61°59' EAST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 2050 FEET THROUGH AN ANGLE OF 5°08'34" FOR A DISTANCE OF 184.00 FEET; THENCE NORTH 56°49'44" EAST 52.34 FEET; THENCE NORTH 70°48'52" EAST 410.83 FEET TO A POINT ON THE CENTER LINE OF THE ALLEY BETWEEN VALLEY STREET AND NUMANCIA STREET AS SAID ALLEY IS DELINEATED ON THE ABOVE SAID MAP OF THE TOWN OF SANTA YNEZ, SAID POINT BEING DISTANT ALONG SAID ALLEY CENTER LINE; NORTH 89°35'20" EAST 42.79 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE EASTERLY BOUNDARY LINE OF MAIN STREET AS SAID STREET IS DELINEATED ON SAID MAP.

PARCEL FOUR:

LOT 1, BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, IN THE STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY JOHN GILCREST, RECORDED MARCH 12, 1888 IN BOOK 1, ~~PAGE 41 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT 2 IN SAID BLOCK 15 DESCRIBED AS FOLLOWS:~~

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BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2, THENCE EAST ALONG THE NORTH LINE OF SAID LOT, 40 FEET; THENCE SOUTH 200 FEET TO THE NORTH LINE OF AN ALLEY; THENCE WEST ALONG THE LINE OF SAID ALLEY TO THE 40 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2, THENCE NORTH ALONG THE WEST LINE OF SAID LOT 200 FEET TO THE PLACE OF BEGINNING.

PARCEL FIVE:

ALL THE PORTION OF THE EAST ½ OF TYNDALL STREET LYING WITHIN THE WESTERLY PROLONGATION OF THE SOUTH LINE OF NUMANCIA STREET AND THE WESTERLY PROLONGATION OF THE SOUTH LINE OF LOT 1 OF SAID BLOCK 15, NOW ABANDONED, WHICH WOULD PASS BY OPERATION OF LAW WITH ANY CONVEYANCE OF SAID LOT 1, BLOCK 15.

PARCEL SIX:

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ALL THAT PORTION OF THE NORTH ½ OF THAT CERTAIN ALLEY IN SAID BLOCK 15 AND THAT PORTION OF TYNDALL STREET IN SAID TOWN OF SANTA YNEZ, LYING BETWEEN THE SOUTHERLY PROLONGATION OF THE EAST LINE OF THE WEST 40 FEET OF LOT 2 IN SAID BLOCK 15 AND THE SOUTHERLY PROLONGATION OF THE CENTER LINE OF TYNDALL STREET, NOW ABANDONED, WHICH WOULD PASS BY OPERATION OF LAW WITH ANY CONVEYANCE OF SAID LOTS 1 AND 2.

PARCEL SEVEN:

THE EAST 10 FEET OF LOT 2 AND ALL OF LOT 3 IN BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOVEMBER AND DECEMBER 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY OF MARCH 12, 1888.

PARCEL EIGHT:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOTS 2 AND 3 IN SAID BLOCK 15 AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14448 OF THE BOARD OF SUPERVISORS, DATED MAY 9, 1955, A CERTIFIED COPY THEREOF BEING RECORDED MAY 12, 1955 AS INSTRUMENT NO 8610 IN BOOK 1314, AT PAGE 337 OF OFFICIAL RECORDS.

PARCEL NINE:

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LOT 4 IN BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA ACCORDING TO MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOVEMBER AND DECEMBER 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY OF MARCH 12, 1888, IN BOOK 1, PAGE 41 OF MAPS AND SURVEYS.

PARCEL TEN:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOT 4 IN BLOCK 15 AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14448 OF THE BOARD OF SUPERVISORS DATED MAY 9, 1955 A CERTIFIED COPY THEREOF BEING RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1314, AT PAGE 337 OF OFFICIAL RECORDS.

PARCEL ELEVEN:

LOT 5 IN BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA ACCORDING TO THE MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOV. AND DEC. 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE SANTA BARBARA COUNTY OF MARCH 12, 1888.

PARCEL TWELVE:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOT 5, AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14148 OF THE BOARD OF SUPERVISORS DATED MAY 9, 1955 A CERTIFIED COPY OF WHICH WAS RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1314, AT PAGE 337 OF OFFICIAL RECORDS

PARCEL THIRTEEN:

LOTS 6 AND 7 TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA ACCORDING TO MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOVEMBER AND DECEMBER 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY OF MARCH 12, 1888.

PARCEL FOURTEEN:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOTS 6 AND 7; AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14148 OF THE BOARD OF SUPERVISORS, DATED MAY 9, 1955, A CERTIFIED COPY OF WHICH WAS RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1314, PAGE 337 OF OFFICIAL RECORDS

PARCEL FIFTEEN:

ALL THAT PORTION OF BLOCK 20 AND THE ABANDONED STREET AND ALLEY ABUTTING AND WITHIN SAID BLOCK IN THE TOWN OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED MARCH 12, 1888 IN BOOK 1, PAGE 41 OF RECORD OF SURVEYS, AND RECORDED OCTOBER 13, 1882 IN BOOK B, PAGE 441 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, SAID PORTION LYING WESTERLY OF THE CENTERLINE OF MAIN STREET (ABANDONED) 80 FEET WIDE, NORTHWESTERLY OF HIGHWAY 246 AS IT NOW EXISTS, EASTERLY OF SANJO COTA CREEK AND SOUTHERLY OF THE SOUTHERLY LINE OF NUMANCIA STREET 80 FEET WIDE.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of Indian tribes. In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 USC. 465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended. The proposed land acquisition is necessary for the Band to exercise governmental jurisdiction by consolidating the land, thus further enhancing tribal self-determination.

On April 12, 2001, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee-to-trust application from Governor Gray Davis, California; Ms. Sara Drake, Attorney General, California Department of Justice; State Clearing House, Office of Planning and Research; Mr. Kenneth Pettit, Santa Barbara County Assessor's Office; Honorable Lois Capps, U.S. House of Representatives; Honorable Jack O'Connell, State Senator, Santa Barbara, California; Honorable Ed Andrisek, City of Solvang, California; Honorable Harriet Miller, Santa Barbara City Hall, Santa Barbara, California; Honorable Neil Jones, City of Buellton, California; Ms. Betti Hannon, Planning Department, City of Santa Barbara; Ms. Joni Gray, Chairperson, County Board of Supervisors District Office, Santa Barbara County; Ms. Bonnie A. Ottoman, General Manager, Santa Ynez, California; Honorable Beth Jackson, 35th District Office, Santa Barbara, California; Honorable Gail Marshall, Third Supervisorial District, Santa Barbara, California; Honorable Dick DeWees, City of Lompoc, California; Lieutenant Mal Parr, Sheriffs Department, City of Buellton, California; Mr. Phil Demery, Director of Public Works, City of Santa Barbara, California; Mr. William F. Brown Jr., Chief of Police, City of Lompoc, California; Mr. Camerino Sanchez, Chief of Police, City of Santa Barbara, California; Chief Warner McGrew, Fire Department, City of Santa Barbara; Chief Warner McGrew, Fire Department, City of Santa Barbara, California; Honorable Dianne Feinstein; and the Honorable Barbara Boxer.

There were a total of fifty-five comments received during the thirty-day comment period. Out of the fifty-five comments, twenty-nine were in opposition to the annexation of land into trust. Out of the twenty-nine comments two letters warranted a cause for a response. The comments are noted as follows:

Ms. Joni Gray, Chair, Board of Supervisors, County of Santa Barbara, responded with a letters dated June 13, 2001 and November 6, 2001, expressing concerns regarding the acceptance into trust by United States of America for the Santa Ynez Band of Mission Indians. More specifically, the County requested a full NEPA review of the entire project as well as, a local public hearing. On November 23, 2004, the Bureau of Indian Affairs met with the Santa Barbara County Board of Supervisors and provided a detailed overview of the 25 CFR Part 151 process. During that time, the BIA answered questions from Board members and the general public regarding land into trust issues.

The County also provided comments regarding the NEPA process, which began after the County's initial comments; the results from the NEPA compliance process are summarized in the analysis to follow.

The balance of twenty-seven comments were speculative in nature and did not provide substantive issues, and therefore, were out of the scope of the Title 25, Code of Federal Regulations, Part 151.10. In fact, the most common concerns listed involved issues with the exiting gaming operations and a possible casino expansion on the subject property.

During the period of processing the application, twenty-six letters were received giving their support to the Santa Ynez Band of Mission Indians Fee-to-Trust Application as follows: April 24, 2002, Assemblyman, Abel Maldonado, Thirty-Third District, State of California; April 30, 2001, Chris Devers, Tribal Chairman, Pauma Band of Mission Indians; April 25, 2002, Support letter from the Coalition of Labor, Agriculture and Business (C.O.L.A.B.); April 25, 2002, Molla Meyer, Area Manager, American Diabetic Association; April 29, 2002, Sara Reyes, Assemblywoman, State of California, 31<sup>st</sup> District; April 30, 2002, Ed Chavez, Assemblyman, Fifty-Seventh District, State of California; April 30, 2002, Senator Jack O'Connell, Eighteenth Senatorial District, State of California; April 30, 2002, Assemblyman Simon Salinas, Twenty-Eighth District, State of California, April 30, 2002; Assemblyman Thomas M. Calderon, Fifty-Eighth District, State of California; April 30, 2002, Senator Richard G. Polanco, Twenty-Second Senatorial District, State of California; May 1, 2002, Marco Antonio Firebaugh, Majority Floor Leader, Fiftieth District, State of California; May 1, 2002, Senator Thomas McClintock, Nineteenth Senatorial District, State of California; May 1, 2002, Lou Correa, Assemblyman, Sixty-Ninth District, State of California; May 1, 2002; Senator Jim Battin, Thirty-Seventh Senatorial District, State of California; May 1, 2002, Senator Nell Soto, Thirty-Second Senatorial District, State of California; May 2, 2002, Assemblyman Tony Cardenas, Thirty-Ninth District, State of California; May 6, 2002, Carol Brown, Executive Director, Dream Foundation, Santa Barbara, California; May 6, 2002, Assemblymember Jenny Oropeza, Chair, Assembly Budget Committee, Fifty-Fifth District, State of California; May 6, 2002, Linda Alexander, Local resident, Centralia, California; May 6, 2002, Jeff Saleen, long time resident of Santa Ynez, California; Efrén Ramirez, Board Member, Lompoc Valley Chamber of Commerce and Visitors Bureau, Lompoc, California; May 8, 2002, Assemblyman Robert "Bob" Pacheco, Sixtieth District, State of California; May 8, 2002, Assemblyman Juan Vargas, Seventy-Ninth District, State of California; May 8, 2002, Assemblyman Mike Briggs, Twenty-Ninth District, State of California; May 9, 2002, Anthony W. Fox, Lt. Col. USAF (Ret.) resident of Santa Ynez, May 10, 2002; Herb J. Wesson, Jr., Speaker of the California State Assembly; May 10, 2002, James D. Brown, Superintendent, College School District, Santa Ynez, California.

Pursuant to CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; and (6) whether or not contaminants or hazardous substances may be present on the property. Accordingly, the following analysis of the application is provided.

## **Factor 1 Need for additional land**

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Subsequent to the mission period, the Mexican Governors of California issued land grants to tribal leaders and several heads of families of the "Santa Ines Indians." The United States Government did not honor these land grants after taking over California. Therefore, the Santa Ynez Band was forced from the lands near the Mission where they had lived throughout the Mexican occupation/rule of California. They eventually resettled at the Sanja de Cota Creek area, which was owned by the church. The U.S. Government eventually acquired this area, approximately 100 acres of land for use as the Santa Ynez Reservation. Much of the land was unusable creek bed and flood plain and continues to be so today.

The current reservation of the Santa Ynez Band of Mission Indians is located in the community of Santa Ynez, southwest of Highway 246 in Santa Barbara County, California. The Tribe has a total enrollment of 158 persons. The reservation is comprised of a total of 138.95 acres in trust, including the original or Southern Reservation, Northern Reservation and the Walker and Davidge property. The approximately 26 acres of the Northern Reservation is primarily residential housing. The Northern and Southern portions of the reservation are separated by an irregularly shaped 12.6-acre parcel of land (Walker and Davidge property), which was accepted into trust on February 4, 2004. The Walker and Davidge property is primarily riparian in nature and is not suitable for development.

The current reservation lands are highly constrained due to a variety of physical, social, and economic factors. A majority of the lands held in trust for the Santa Ynez Band are located in a flood plain and therefore, are unsuitable for development because of flooding and drainage problems. The irregular topography and flood hazards are associated with the multiple creek corridors, which run throughout the property resulting in severe limitations of efficient land utilization. Undeveloped property is at a minimum within the Santa Ynez Reservation. ~~Lands that are undeveloped are of insignificant size for development.~~ On the Northern portion of the reservation, which is made up of 26.9 acres, land utilization is specifically designed to provide residential opportunities for tribal members. Any further development in the area would be appropriate only for small-scale residential enhancements or governmental facilities.

The remaining 99 acres held in trust for the Santa Ynez Band constitutes the Southern Reservation. Portions of the Southern reservation, upon which the tribal hall and other offices are now located, are constrained by the Sanja de Cota Creek and another tributary creek. These two watercourses have created a small island thus limiting further the available space. Given the limited usable land the Tribe has to work with, it has established a plan for land consolidation of lands immediately adjacent to the Reservation. Such land consolidation allows the Tribe to consolidate its holdings for purposes of enhancing its self-determination, beautification of the Reservation and surrounding properties, and protection and preservation of invaluable cultural resources.

The property subject of this acquisition is comprised of 6.9 acres, more or less, and is located adjacent to the exterior boundaries of the Santa Ynez Reservation.

The property has historical and cultural significance to the Tribe due to the existence of archaeological sites. ~~The identified site has a portion of an ancient village site, which the~~ Tribe is making every effort to preserve and protect. It is proper that the Tribe maintain primary interest in such resources, and therefore, be the ultimate authority on proper treatment and disposition of such resources. Placing the property into trust will ensure tribal jurisdiction over the property and preserve and protect such resources for generations to come.

The Tribe has demonstrated a need in order to manage and develop the property pursuant to its own laws, interests and goals. As with any government, the Tribe must be able to determine its own course in addressing the needs of its government and members. If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the overriding authority of the State of California and the County of Santa Barbara, thus impairing the Tribe's ability to adopt and execute its own land use decisions and development goals. Therefore, it is our conclusion that in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land, trust status is essential.

### **Factor 2 - Proposed Land Use.**

The Santa Ynez Band of Mission Indians originally planned to use the 6.9 acres of land to provide additional land for an expanded tribal administration and community center. The intent is to develop the site for community facilities that support tribal self-determination. However, because of the significant archaeological find on the property, the Tribe has determined that such a use would not be consistent with its goals.

The new plans for the property are anticipated to consist of three components (1) a cultural center and museum; (2) an open community/commemorative park which would focus on the history of the Chumash people and act as representative/buffer for the village site; and ~~(3) a correlative commercial retail building which would help generate~~ revenues for upkeep of the cultural center and park.

In addition to the necessity of taking the property into trust for purposes of preserving the invaluable cultural resources on the property, taking the property into trust will serve to enhance the Tribe's land base, thus enhancing tribal self-determination. The transfer of land into trust status will allow the Tribe to assert jurisdiction over such things as the overt appearances of the property as well as the cultural resources contained within the property. Therefore, transferring the property from fee ownership by the Santa Ynez Band into trust will help the Tribe to achieve its goals of cultural resource protection and preservation, community outreach and self-determination.

### **Factor 3 - Impact on State and Local Government's Tax Base.**

The current Assessor's taxes for Parcel Numbers 143-241-03, 143-251-01, 143-251-05, 143-251-06, 143-251-08, 143-251-09 and 143-241-02 are \$43,239.89 per year according to the Santa Barbara County Tax Assessor's Office. The zoning of the parcels is highway commercial, which is consistent with the proposed use.



Emergency services to the property are provided by the City and County Fire and Police through tribal agreements with those agencies. Furthermore, the Tribe collects sales tax on all transactions to non-Tribal members as well as Tribal members not residing on the Reservation. In fact, the Tribe has collected more than \$200,000 in sales tax this year for the State and County.

Additionally, the Tribe has proven to be economically beneficial to the region by providing over 1,300 jobs at its resort and tribal government operations. Through this tribal employment of local citizens, the State has collected nearly \$2.0 million in income tax. Over \$1.0 million of that comes from employed tribal members. Another benefit, which the tribe provides is a health clinic on the reservation that is open to all of the residents of Santa Ynez and Solvang. Finally, the Tribe purchases goods and services from over 600 vendors in the local community for its business operations.

The County does not currently collect sales tax from any business on the subject property. As such, the County is not losing any sales tax from the transfer of the subject property in trust for the benefit of the Santa Ynez Band of Mission Indians of California. We conclude that removal from the tax rolls will not incur an adverse impact on the County's financial situation.

#### **Factor 4 - Jurisdictional Problems/Potential Conflicts**

Tribal jurisdiction in California is subject to PL 83-280, therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction. There are no anticipated jurisdictional or land use problems. Emergency services to the property are provided by the City and County Fire and Police through agreements between those agencies and the Tribe. It does not appear that transfer to trust status would result in jurisdictional conflict.

#### **Factor 5 - Whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status**

Acceptance of the lands into Federal trust status will not impose any significant additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Reservation. The property is vacant and has no forestry or mineral resources, which would require BIA management. The zoning of the parcels is zoned highway commercial, which is consistent with the proposed use. With respect to the maintenance of the property itself, the Tribe has, and will continue, to maintain the property through its Planning/EPA department. Emergency services to the property are provided by City and County Fire and Police through agreements between those agencies and the Tribe.

The development of the property will be solely funded with the tribal monies, as well as being managed by Tribe. Based on the Tribe's current plans for the property, it is anticipated that easements for utilities may be necessary. The processing of any easements will not impose any significant burdens on the BIA as the Tribe itself contracts for surveying and environmental services, as well as the drafting of any applications and

easement documents. The minimal processing of any easements documents will only affect the BIA at the Agency level and will require recording at the Land Title and Records Office. As such, the Bureau of Indian Affairs is equipped to administer the additional responsibilities resulting from this acquisition.

**Factor 6 - Whether or not contaminants or hazardous substances are present on the property**

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility for conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record, which includes a negative Level I "Contaminant Survey Checklist", reflects that there were no hazardous materials or contaminants on the property proposed for acquisition.

**National Environmental Policy Act Compliance**

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1.

In this particular instance, an Environmental Assessment (EA), dated April 2004, was distributed for public review and comment for the period beginning April 21, 2004, and ending May 24, 2004. Comments were also solicited directly from the California Attorney General, Governor of the State of California, the Santa Barbara County Board of Supervisors, the City of Solvang, the U.S. Fish and Wildlife Service, Concerned Citizens, Santa Ynez Community Services District and Santa Ynez River Water Conservation District. Comments on the EA were received from the County of Santa Barbara, the City of Solvang, Santa Ynez Valley Concerned Citizens, Caltrans and various private citizens. Based upon the analysis documented in the EA, and consideration of comments received during the public review period, a Finding of No Significant Impact (FONSI) was completed on September 22, 2004. The FONSI was circulated for public review for the period beginning September 29, 2004, and ending October 22, 2004.

Compliance with requirements of Section 106 of the National Historic Preservation Act has been documented in a letter dated October 22, 2002. Similarly, a Phase 1 Survey for hazardous materials, required by 602 DM, was completed on February 17, 2004.

In summary, compliance with NEPA, the National Historic Preservation Act, and stipulations of 602 DM, has been achieved.

## CONCLUSION

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. Subject acquisition will vest title to the subject real property in the United States of America in trust for the Santa Ynez Band of Mission Indians in accordance with the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 USC 465).

If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.


Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed. If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior, 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

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~~If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).~~

Sincerely,



Regional Director

Enclosure[s]

43 CFR 4.310-4.340

cc: see attached

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

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California State Clearinghouse (ten copies) – 7004 0750 0001 2844 1016  
Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

Ms. Sara J. Drake, Deputy Attorney General – 7004 0750 0001 2844 1023  
State of California  
Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Mr. Paul Dobson, Deputy Legal Affairs Secretary – 7004 0750 0001 2844 1030  
Office of the Governor of California  
State Capitol Building  
Sacramento, CA 95814

James Peterson, District Director - 7004 0750 0001 2844 1047  
Office of the Honorable Dianne Feinstein  
750 "B" Street, Suite 1030  
San Diego, CA 92101

Mr. William F. Brown, Jr. - 7004 0750 0001 2844 1160  
Chief of Police  
Lompoc Police Department  
107 Civic Center Plaza  
Lompoc, CA 93436

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Ms. Joni Gray, Chairperson – 7004 0750 0001 2844 1153  
County Board of Supervisors  
Santa Barbara County  
401 E. Cypress Avenue  
Lompoc, CA 93436

Ms. Marlene F. Demery – 7004 0750 0001 2844 1177  
City Manager  
City of Solvang  
P.O. Box 107  
Solvang, CA 93465

Honorable Ed Andrisek – 7004 0750 0001 2844 1184  
City of Solvang  
1644 Oak Street  
Solvang, CA 93464

Honorable Neil Jones – 7004 0750 0001 2844 1191

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City of Buellton  
140 W. Highway 246  
Buellton, CA 93427

Lieutenant Mal Parr – 7004 0750 0001 2844 1207

Sheriff's Department  
P.O. Box 156  
Buellton, CA 93427

Honorable Harriet Miller – 7004 0750 0001 2844 1214

Santa Barbara City Hall  
P.O. Box 1990  
Santa Barbara, CA 93101

Honorable Gail Marshall – 7004 0750 0001 2844 1221

Third Supervisorial District  
105 E. Annapamu Street  
Santa Barbara, CA 93101

Chief Warner McGrew – 7004 0750 0001 2844 1146

Fire Department, City of Santa Barbara  
121 W. Carrillo Street  
Santa Barbara, CA 93101

Mr. Camerino Sanchez, Chief of Police - 7004 0750 0001 2844 1252

Santa Barbara Police Department  
215 E. Figueroa Street  
Santa Barbara, CA 93101

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Mr. Phil Demery – 7002 3150 0005 2285 3209

Director of Public Works  
County of Santa Barbara  
Santa Barbara, CA 93101

Ms. Beth Hannon – 7002 3150 0005 2285 3223

City Hall, Planning Department  
P.O. Box 1990  
Santa Barbara, CA 93101

Mr. Kenneth Pettit – 7004 0750 0001 2844 1245

Santa Barbara County Assessor's Office  
105 E. Annapamu Street, #204  
Santa Barbara, CA 93102

Mr. Steven Shane Stark – 7004 0750 0001 2844 1238

Office of County Counsel

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County of Santa Barbara  
105 E. Annapamu Street, Suite 201  
Santa Barbara, CA 93101

Ms. Bonnie A. Ottoman, General Manager - 7002 3150 0005 2285 3124

Santa Ynez Community Services District  
P.O. Box 667  
Santa Ynez, CA 93460

Mr. Charles Jackson, Co-Chair – 7002 3150 0005 2285 3216

The Santa Ynez Valley Concerned Citizens  
P.O. Box 244  
Santa Ynez, CA 93460

Honorable Lois Capps - 7002 3150 0005 2285 3131

US House of Representatives  
1428 Chapalla Street  
Santa Barbara, CA 93101

Ms. Jena A. MacLean - 7002 3150 0005 2285 3148

Perkins Coie, LLP  
607 Fourteenth Street, N.W.  
Washington, DC 20005-2011

Regular Mail:

Superintendent,

Southern California Agency

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1451 Research Park Drive, Suite 100  
Riverside, CA 92507-2471

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Office of the Secretary, Interior

~~duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.~~

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe shall be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 54 FR 6485, Feb. 10, 1989, unless otherwise noted.

§4.310 Documents.

(a) Filing. The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) shall be effective the date it is received by the Board.

(b) Service. Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative shall include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) Computation of time for filing and service. Except as otherwise provided by law, in computing any period of time

prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

(d) Extensions of time. (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) Retention of documents. All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant shall serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opening service upon the named parties. Opposing parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

#### §4.312

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel shall be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date shall not be less than the appropriate period of time established in this section.

#### §4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion or order of an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and shall be given immediate effect.

#### §4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board shall be

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served in the same manner as appeal briefs.

#### §4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

#### §4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

#### §4.316 Remands from courts.

Whenever any matter is remanded from any court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

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#### §4.317 Sta

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(b) *Disqualification* in accordance with the recognized judge appropriate. If the Board, a personal bias or prejudicial hearing draw the matter

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#### §4.320 Wh

(a) A party appeal to the administrative law judge or regarding the matter

(b) *Notice* from the department shall be signed by the attorney, or as provided by the Board of Hearings and the Inter



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§ 4.317 Standards of conduct.

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(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

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(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

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§ 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

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APPEALS TO THE BOARD OF INDIAN .  
APPEALS IN PROBATE MATTERS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

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§ 4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

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(b) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard,

Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(c) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall include a certification that service was made as required by this section.

(d) *Action by administrative law judge; record inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[54 FR 6487, Feb. 10, 1989, as amended at 64 FR 46152, Aug. 24, 1999; 65 FR 25450, May 2, 2000; 66 FR 32890, June 18, 2001; 66 FR 33741, June 25, 2001]

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

#### § 4.322

##### § 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.

##### § 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, shall be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part shall be conformed to the original and forwarded to the Superintendent concerned.

#### APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

##### § 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special dele-

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gation or request, the Board shall not adjudicate:

- (1) Tribal enrollment disputes;
- (2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or
- (3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

##### § 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

- (a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;
- (b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or
- (c) Where otherwise provided by law or regulation.

##### § 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of

#### Office of the Secretary

appeal not timely filed shall be dismissed for lack of jurisdiction of appeal shall include:

- (1) A full identification of the parties to the appeal and of the relief sought;
  - (2) A statement of the grounds of the appeal and of the relief sought;
  - (3) The names and addresses of all interested parties, including tribal corporations, and of all interested parties who may be affected by a change in the decision, whether or not they are parties to the proceedings.
- (b) In accordance with 43 CFR 4.332, a notice of appeal shall be filed within 30 days from receipt of the decision during which time the appellant shall be permitted to review the appeal. If the appellant notifies the Board that he has filed the appeal, any documents filed with the Board shall be transmitted to the Board of Indian Appeals.
- (c) When the appeal is filed, the official who issued the decision appealed shall, upon request, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appeal may be required to provide information on any Indian, Indian tribe, or Indian activities involved.

##### § 4.333 Service of notice.

(a) On or before the date of filing the notice of appeal, the appellant shall serve a copy of the notice of appeal on each known interested party, including officials of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The appellant shall certify that service has been made by this section. The names and addresses of all interested parties shall be served. If the appellant is an Indian tribe or individual, the appellant shall, upon request, provide the official of the Bureau of Indian Affairs to whom the notice of appeal is being filed with a copy of the notice of appeal and supporting documents.

**Office of the Secretary, Interior**

appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

- (1) A full identification of the case;
- (2) A statement of the reasons for the appeal and of the relief sought; and
- (3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

**§4.333 Service of notice of appeal**

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

**§4.334 Extensions of time.**

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in §4.332 of this part, may not be extended.

**§4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.**

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

- (1) The decision appealed from;
- (2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

**§4.336 Docketing.**

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown

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by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

**§ 4.337 Action by the Board.**

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

**§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.**

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other

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comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

**§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.**

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

**§ 4.340 Disposition of the record.**

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

~~WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION~~

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

**§ 4.350 Authority and scope.**

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-158 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term Act means the White Earth Reservation Land Settlement Act of 1985 as amended.

**Office of the Secretary**

(2) The term Board of Indian Appeals means the Board of Indian Appeals and Appeals.

(3) The term Project means the Project of the Superintendent of the Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs with delegated authority in the Minneapolis Area District Office, or other federal officer in charge of the Project.

(4) The term *par* means the Project presumptive or precedent, or of any recently deceased decedent's heir of the decedent.

(5) The term *cc* means a monetary sum, as provided in § 8(c) of the Act.

(6) The term *administrative law judge* means an administrative law judge, or other official of the Office of Hearings and Appeals, acting in his authority, as provided in § 8(c) of the Act.

(7) The term *appeal* means a final decision upon reconsideration by the Board.

[56 FR 61383, Dec. 3, 1991, as amended at 6

**§ 4.351 Commencement of proceedings**

(a) Unless an heir exists, the Project Director shall determine the heirs of those persons who died testate and receive compensation under the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(b) The data shall be limited to:

(1) A copy of the one exists. If there is no copy, then another